

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: CIVIL ACTION
Silicone Breast Implant Litigation**

NO. 99-MC-64

PLAINTIFF'S MASTER MOTION FOR REMAND

AND NOW, the plaintiff, by and through her attorneys, respectfully avers as follows in support of their Motion for Remand to state court:

- 1. On or about October 1994, plaintiff filed an action for personal injuries alleging medical malpractice and products liability.**
- 2. Dow Corning Corporation subsequently filed for bankruptcy protection under 1011 in the United States Bankruptcy Court for the Eastern District of Michigan.**
- 3. As a part of the massive removal action to the District Court of Pennsylvania pursuant to 28 U.S.C. 1452(a) and 1334, Dow Corning removed this case.**
- 4. These removals were based solely on the debtors' bankruptcy filing and were not based on diversity of citizenship, federal question, or other grounds.**

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- 5. On or about September 15, 1995, the Judicial Panel of the Multi-District Litigation conditionally transferred this case, along with many others, to the Northern District of Alabama.**

6. On or about January 21, 1999, the Judicial Panel of the Multi-District Litigation remanded this case, along with many others, to this Honorable Court in the manner described in the Order attached as Exhibit "A".

7. Order dismissed claims against numerous defendants as noted in Exhibit "A" severed but did not remand claims against Dow Corning Corporation and Dow Corning Wright Corporation.

8. In the case at bar, there is no diversity of citizenship, federal question, or federal court jurisdiction on any grounds.

9. Plaintiff believes, and therefore avers, that remand is appropriate in order for Plaintiff to properly pursue her claims in state court.

10. Plaintiff believes, and therefore avers, that she will be unduly prejudice if this Honorable Court does not grant this motion for remand.

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WHEREFORE, it is respectfully requested this Honorable Court exercise its jurisdiction under 28 U.S.C. 1334(c)(1) and 1452(b) and remand this case to state court in the interest of justice and equity.

Dated:

RESPECTFULLY SUBMITTED,

By:

JAMIE L. SELLER, ESQUIRE

**Sheller, Ludwig & Badey
Third Floor
1528 Walnut Street
Philadelphia, Pennsylvania 19102
215.790.7300**

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CERTIFICATION OF SERVICE

**It is hereby certified by the undersigned member of the Bar of this Court
that one (1) copy of Plaintiff's Master Motion for Remand has been served upon each of the**

counsel whose name and address is set forth below by mailing said copies via United States

First Class Mail, postage prepaid.

**Elizabeth A. Gardner, Esquire
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By:

JAMIE L. SHELLER, ESQUIRE

**Sheller, Ludwig & Badey
Third Floor
1528 Walnut Street
Philadelphia, Pennsylvania 19102
215.790.7300**

Attorney for Plaintiff

Dated:

**F:\WPDATA\JLS\BIL\MOTION\REMAND.MAS
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division**

In re:

**SILICONE GEL BREAST IMLANTS
PRODUCTS LIABILITY LITIGATION
(MDL 926)**

**Master File No.
CV 92-P-100000-S**

**This document relates to the cases
identified on the attached appendix**

ORDER No. 48B
Remand to Transferor Courts

Pursuant to the order of the Judicial Panel on Multidistrict Litigation dated January 21, 1999, the cases listed in the appendix to this order are hereby remanded to the Transferor Courts shown in the appendix subject to the following terms and conditions:

(a) All claims Dow Corning Corp. and Dow Corning Wright (including any crossclaims or third-party claims by defendants against Dow Corning Corp. or Dow Corning Wright) are, to the extent not previously dismissed, severed and not remanded. Such claims are, however, administratively closed in this court and dismissed without prejudice to the institution and pursuit of such claim in the United States District and Bankruptcy Courts for the Eastern District of Michigan in accordance with procedures established in those courts. This court will however, retain jurisdiction to vacate such dismissals and reopen such claims against Dow Corning on written motion if filed within 30 days after on proceedings of Dow Corning are dismissed or within 30 days after the Eastern District of Michigan determines that reopening of such cases against Dow Corning is the procedure to be followed in liquidating such claims.

(b) All claims by any party against The Dow Chemical Company, Inc. and Dow Holdings Inc. are, to the extent dismissed or transferred, severed and transferred to the United States District Court for the Eastern District of Michigan. Any requests for transfer of such claims to another federal court or for remand of such claims to state court will be determined by the Eastern District of Michigan.

(c) All claims by any party against McGhan Medical Corp., INAMED Corp, CUI Corp, and their subsidiaries and principals are, to the extent not previously dismissed, severed and administratively without prejudice to the pursuit of such claims in a pending class settlement of such claims (and with the same rights under any such settlement as if they still had a pending lawsuit against such companies and individuals). Moreover, this court retains jurisdiction to vacate such closings and reopen such claims on request if that pending class settlement should not be approved.

(d) All claims against the following companies have been dismissed with prejudice through unappealed final judgments: Bioplasty, Inc.; Bio-Manufacturing, Inc.; Cabot Medical Corporation; Corning, Inc.; Foamex Products, Inc.; General Electric Co.; General Felt Industries, Inc.; Huls America Inc.; Knoll International Holdings, Inc.; Petrarch Systems, Inc.; Recticel Foam Corporation; Scotfoam Corporation; Scott Paper Company; Surgitek, Inc.; '21' International Holdings, Inc; '21' Foam Company, Inc.; and Uroplasty, Inc.

(e) All listed claims against Mentor Corporation; Mentor Polymer Technologies, Inc.; Mentor O&O, Inc.; Mentor IVS, Inc.; Mentor Urology, Inc.; Mentor International, Inc.; and Teknar Corp. relating to breast implants implanted before June 1, 1993, are dismissed with prejudice.

(f) All listed claims against Union Carbide Corporation are, to the extent based on its 1990-1992 ownership of McGhan NuSil Corporation, remanded to the indicated transferor court, but will be subject to dismissal by such court as to any plaintiff who, though eligible, failed to timely opt out of the Revised Settlement Program. All other claims against Union Carbide Corporation, as well as all claims against Union Carbide Chemicals and Plastics Company, Inc., have been dismissed with prejudice pursuant to Order No. 37.

(g) All claims against Bristol-Myers Squibb Co., Medical Engineering Corp., Baxter Healthcare Corp., Baxter International Inc., Minnesota Mining and Manufacturing Co. ('3M'), and their subsidiaries are, if listed in the appendix, remanded to the indicated transferor court, but will be

subject to dismissal by such court as to any plaintiff who, though eligible, failed to timely opt out of the Revised Settlement Program. Previously-pending claims against those companies if not listed in the appendix will be dismissed (subject to the right to reopen to the extent permitted under the terms of the Revised Settlement Program should a participating defendant default in meeting its financial obligations under that settlement). Counsel should note that pending claims against American Hospital Supply, American Heyer-Schulte and Heyer-Schulte are not shown if there are pending claims against Baxter Healthcare inasmuch as those claims are encompassed within the claims against Baxter Healthcare.

(h) All claims against other defendants not described in paragraphs (a) through (g) above are, if listed in the appendix, remanded to the indicated federal courts, or, if not listed in the appendix, are dismissed.

(I) In a few of the listed multi-plaintiff cases, the appendix identifies (in the column listing the defendants against whom claims are to be pursued) the plaintiffs whose claims are to be remanded. Where such an indication is provided, the claims of all other plaintiffs in those cases are severed and dismissed or administratively closed in this court and are not remanded.

(j) Further proceedings in the transferor courts after remand will be governed, in general and to the extent applicable, by the orders previously entered in MDL926 and Master File No. CV92-P-10000-S.

(1) Each plaintiff must, within 60 days after remand, serve upon the defendants in the case a completed questionnaire as previously prescribed by this court. This requirement does not apply if the plaintiff has previously served such a questionnaire on the defendants (or previously answered interrogatories seeking similar information) and such information is accurate and complete.

(2) Any motions for transfer under 28 U.S.C. 1404 or 1406, or for remand to state court, will be decided by the transferor court after remand.

(3) The provisions of Order No. 30, Order No. 30F, and Order No. 30G will apply to such further proceedings, including paragraph 8 of Order No. 30 which imposes an assessment on recoveries for "common benefit" services and expenses.

(4) The deposition testimony of the members of the National Science Panel, appointed under orders No 31 and 31 D, will, when taken, be admissible and usable to the same as if taken before remand of the case.

(5) This court has previously transmitted to many of the courts to which cases are being remanded a copy of Order No. 30 and the various orders listed in Appendix A to Order No. 30 with which the courts should be made aware. The parties in the remanded case are directed to ascertain from the courts whether such courts have previously received such orders and, if not, to contact the Clerk of this court to obtain, for transmittal to the remand courts, a 'package' of such orders. Later orders of general interest would include Order No. 31 * (National Science Panel), Order No. 36 (ongoing studies), Order No. 37 (partial summary judgment for Union Carbide), Order No. 38 (summary judgment for General Electric). These orders, including the stipulation regarding objections to documents and the appendices to that stipulation, can also be obtained through the Internet at www.fjc.gov/BREIMLIT/mdL926.htm.

(6) Any order or docket entry reflecting the designation of Plaintiffs' Liaison Counsel

or Def endants' Liason Counsel as attorneys of record in any of the cases are hereby vacated.

This order will be filed in Master File CV 92-P-10000-S and (with the applicable page of the appendix) in each of the cases listed in the appendix.

This the 26th day of January, 1999.

Chief Judge Sam C. Pointer, Jr.

Service: Plaintiffs' Liaison Counsel
Defendants' Liaison Counsel

| | | | | |
|----------------|------------|--------------|------------------|---|
| OR 3:95-01176 | CV96-10530 | MOHR | KOCHER_L | DEMARS, RONALD V |
| OR 3:95-01179 | CV95-18266 | TOLVA | WILLI_MI | BIEKER, FRED W. |
| OR 3:95-01368 | CV95-19712 | BALDWIN | DAILEY_K | GOTTSCHALK, WOLFRAM |
| OR 3:95-01379 | CV95-17923 | CLANCY | DAILEY_K | DEMARS, RONALD V. |
| OR 3:95-01384 | CV95-17928 | CRANDALL | DAILEY_K | PLAS SURG SPECIALIST; WORLAND, RONALD |
| OR 3:95-01387 | CV95-17931 | DAVIS-MILLER | DAILEY_KBAXTER | HEALTHCARE; BAXTER INTIL; SIEKER, FRED W. |
| OR 3:95-01392 | CV95-17936 | DUDELHEIM | DAILEY_KKORN, | HOWARD |
| OR 3:95-01395 | CV95-17939 | ELY | DAILEY_KSIMMONS, | ROBERT |
| OR 3:95-01409 | CV95-17953 | JOHNSON | DAILEY_KNISBET, | WILLIAM |
| OR 3:95-01417 | CV95-17961 | MAHON | DAILEY_KSTONE, | ELIZABETH J |
| OR 3:95-01428 | CV95-17972 | NASH | DAILEY_KDEKARS, | RONALD V. |
| OR 3:95-01431 | CV95-17975 | PETERSON | DAILEY_KSIMMONS, | ROBERT |
| OR 3:95-01434 | CV95-17978 | ROCKWELL | DAILEY_KNOLAN, | JAMES T |
| OR 3:95-01435 | CV95-17979 | ROWLEY | DAILEY_KJARRETT, | JOHN |
| OR 3:95-01438 | CV95-17982 | THOMPSON | DAILEY_KSIMMONS, | ROBERT |
| OR 3:95-01439 | CV95-17983 | WATTS | DAILEY_KSIMMONS, | ROBERT |
| OR 3:95-01441 | CV95-17985 | WILLETTE | DAILEY_KSIMMONS, | ROBERT |
| OR 3:95-01443 | CV95-17987 | WOOD | DAILEY_KMELVIN, | MARCUS |
| OR 3:95-01445 | CV95-17989 | YAZZOLINO | DAILEY_KSTONE, | ELIZABETH J |
| OR 3:98-00525 | CV98-12140 | SEALE | EYERMA_LBAXTER | HEALTHCARE; BAXTER INTIL |
| OR 6:92-06024 | CV92-10239 | BOSCHE | LICCAR_S3M; | MCGHAN INDUSTRIES |
| PAF 2:91-05057 | CV92-10240 | SHUMOSKI | SAMUEL_RBAXTER | HEALTHCARE; COOPER COIS; COOPERVISION; CV |

| | | | | |
|----------------|------------|---|---|--------|
| PAE 2:92-00570 | CV92-10067 | M. S. BOYER | HAGGER_WBRISTOL-MYERS; MEC | |
| PAE 2:92-07066 | CV93-10151 | ZAREVICS | CORCHI_MFOX, JAMES; JEFFERSON PARK HOSP. | |
| PAE 2:92-07349 | CV93-10294 | MYERS | CORCHI_MBRISTOL-MYERS | |
| PAE 2:93-00545 | CV93-11131 | GILLUM | SHELLE_JAESTNETECH; BAXTER TRAVENOL; BRISTOL-MYERS; | COOPER |
| | | COIS; COOPERSURGICAL; NEC; SIROD CORP.; | TRAVENOL LAB | |
| PAE 2:93-00713 | CV93-11132 | SCHULTZ | FODERA_LHOSP. OF UNI. OF PENN.; HOLST, HAZEL | |
| PAE 2:93-01742 | CV93-11420 | BARONE | SHELLE_JFITZPATRICK, MARCIA; GRADUATE HEALTH SYSTEM; | |
| | | LANKENAU HOSP | | |
| PAE 2:93-02810 | CV93-11856 | SMITH | SHELLE_JAESTHETECH; BRISTOL-MYERS; COOPER COIS; MEC | |
| PAE 2:93-06351 | CV94-10188 | FRIEDMAN | FODERA_L3M; AESTHETECH; APPLIED SILICONE; BAXTER | |
| | | HEALTHCARE; BRISTOL-MYERS; COOPER COIS; | COOPERSURGICAL; MARKHAMMED INTIL; MEC | |
| PAE 2:94-07523 | CV95-10030 | PAGE | SHELLE_JYOUNGBLOOD, RCBERT | |
| PAE 2:95-07660 | CV95-13176 | KIMTZ-DEJDAR | SHELLE_JDAVIS, J WALLACE; THOMAS JEFF UNIV MOSP | |
| PAE 2:95-03672 | CV95-13177 | ROBINSON-HAHN | PLAKIN_NLEHIGH VALLEY HOSP; OKUNSKI, WALTER J; PLASTIC | |
| | | | SURGEONS | |
| PAE 2:95-04206 | CV95-19224 | RIGBY | ZACHER_JWALL, SIMEON H | |
| PAE 2:95-04317 | CV95-13091 | HOYT | SHELLE_JDOYLESTOWN HOSP; HUNTER, MARVIN; PLASTIC SURG. | |
| | | ASSOC | | |
| PAE 2:95-04360 | CV95-13097 | NIVER | SHELLE_JHOLST, HAZEL; TRUSTEES UNIV OF PA | |
| PAE 2:95-04368 | CV95-13599 | KELTZ | SHELLE_JAESTHETECH; BRISTOL-MYERS; COOPER COIS; | |
| | | | COOPERSURGICAL; MEC; MOSER, MANNY H; NATURAL Y; | |
| | | | PROSERPI-MOSERPLAS; READING HOSP | |
| PAE 2:95-04443 | CV95-13105 | SHUMOSKI | SAMUEL_RFITZPATRICK, MARCIA A | |
| PAE 2:95-04818 | CV95-19230 | SKOLNICKI | SAMUEL_RMCCLELLAN, R MICHAEL; SPRINGFIELD HOSP | |
| PAE 2:95-04821 | CV95-14173 | RICH | JOKELS_NFRANKFORD HOSP; HAMILTON, RALPH; HOSP UNIV OF | |
| | | PA;JEANES HOSP; KALAFER, MARVIN | | |
| PAE 2:95-04824 | CV95-19232 | PROVENZANO | DANIEL_RDELONE, FRANCIS X JR; FITZPATRICK, MARCIA A; HOSP | |
| | | UNIV OF PA; LANKENAU HOSP | | |
| PAE 2:95-04847 | CV95-19247 | OINEILL | ZACHER_JGRADUATE HOSP; SOLOMON, MARK P | |
| PAE 2:95-04856 | CV95-19254 | MILLER | SHELLE_JFOX, JAMES W; MED COLLEGE HOSP ELK; MOORE, JOHN H | |
| | | JR;SEITCHIK, MURRAY W; THOMAS JEFF UNIV HOSP | | |
| PAE 2:95-04857 | CV95-19255 | MILKE | SAMUEL_RLIPSHUTZ, HERBERT; PENNSYLVANIA HOSP | |
| PAE 2:95-04860 | CV95-19256 | MILKE | SAMUEL_RLIPSHUTZ, HERBERT; PENNSYLVANIA HOSP | |
| PAE 2:95-04863 | CV95-14187 | WILSON | SHELLE_J3M; GERMANTOWN HOSP MED; PRICE, RAPHAEL | |
| PAE 2:95-04867 | CV95-19259 | SCANLON | SAMUEL_PCAPLAN, HOWARD S; CEDRONE, FRANCINE A; HOSP UNIV OF | |
| | | PA; PENNSYLVANIA HOSP | | |
| PAE 2:95-04881 | CV95-17993 | TOBER | SHELLE_JBRISTOL-MYERS; COOPERSURGICAL; GRADUATE | |
| | | HOSP;HAHNEMANN UNIV HOSP; MEC; NATURAL Y; | SOLOMON, MARK P | |
| PAE 2:95-04911 | CV95-19269 | KAHANA | BARRE_MIGRADUATE HOSP; KARANDY, EMILY; PENNSYLVANIA | |
| | | HOSP;PENROD, DALE S | | |
| PAE 2:95-04918 | CV95-14195 | JOHANNES | SHELLE_J3M; BRISTOL-MYERS; DOLSKY, RICHARD L; GRADUATE | |
| | | HOSP;MEC; NATURAL Y | | |
| PAE 2:95-04939 | CV95-19279 | HASSEL | SHELLE_JPROSERPI, SERGIO; PROSERPI-MOSERPLAS; READING HOSP | |
| PAE 2:95-04940 | CV95-14202 | HEFFNER | SHELLE_JPROSERPI, SERGIO; PROSERPI-MOSERPLAS | |
| PAE 2:95-04947 | CV95-14205 | ELKERTON | SHELLE_JCLARENCE FREED PLAST; FREED, CLARENCE; GRANDVIEW | |
| | | HOSP | | |
| PAE 2:95-04957 | CV95-19287 | WHELAN | BARRE-RIBRYN MAWR HOSP; HOLST, HAZEL; HOSP UNIV OF PA; | |
| | | LEHR,ESTATE OF HERNDON 8; NOONE, R BARRETT; SPENCE, | RICHARD | |